

### **REMARKS**

This Amendment is filed in response to the Final Office Action mailed October 10, 2008 ("*Final Office Action*"). In this Amendment, claims 1-4, 8, and 10-13 are amended. Claims 16-20 are new. Claims 6, 7, 9, and 15 are cancelled, and claim 14 is unchanged. Following entry of this amendment, claims 1-5, 8, 10-14, and 16-20 shall be pending.

In the *Final Office Action*, claims 6, 7, and 9 are objected to because of an informality. Claim 1 is provisionally rejected based on nonstatutory double patenting, and claims 1-5, 8, and 10-15 are rejected for being directed to nonstatutory subject matter and/or based on prior art grounds. For the reasons set forth below, these rejections are hereby traversed.

#### **I. INFORMATION DISCLOSURE STATEMENT**

In the *Final Office Action*, the Examiner noted that the reference contained in the specification of the present application does not constitute a proper Information Disclosure Statement. An Information Disclosure Statement has been filed along with this Amendment.

#### **II. DOUBLE PATENTING REJECTION**

The Examiner has provisionally rejected claim 1 on the grounds of nonstatutory double patenting over claim 1 copending Application Serial No. 11/271,752. A terminal disclaimer disclaiming the term of the present Application over Application Serial No. 11/271,752 is provided herewith this Amendment. Accordingly, it is requested that this double patenting rejection be withdrawn.

#### **III. CLAIM OBJECTION**

The Examiner objected to claim 6, 7, and 9 because of a discrepancy between the claim identifiers and the text of the REMARKS section of the Applicants'

Amendment filed July 31, 2008. In the above Listing of Claims, the identifiers for claims 6, 7, and 9 have been revised to recite Cancelled. Accordingly, it is requested that these objections be withdrawn.

**IV. REJECTIONS UNDER 35 U.S.C. §101**

Claims 1-9 and 15 are rejected under 35 U.S.C. §101, because the claimed inventions are allegedly directed to non-statutory subject matter in that they recite a "septum" which is a human body part. Without conceding to the merits of this rejection, the Applicants have deleted all identified recitations of "septum" from the claims. Accordingly, it is requested that these rejections be withdrawn.

**V. REJECTIONS UNDER 35 U.S.C. §102**

Claims 1, 2, 5, 8, 10-12, 14, and 15 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,334,864 to Amplatz et al. ("*Amplatz '864*"). Claims 1 and 10 are independent claims. Claims 2, 5, and 8 are dependent claims that depend from claim 1, and claims 11, 12, 14, and 15 are dependent claims that depend from claim 10. For at least the reasons set forth below, it is submitted that these prior art rejections should be withdrawn and the pending claims allowed.

Amended claim 1 recites, in part, an occlusion device comprising a braiding having a proximal retention area with a first diameter and a distal retention area with a second diameter; a holder disposed in the distal retention area, wherein the ends of the wires or threads converge therein; and a cylindrical crosspiece interposed between said proximal and distal retention areas, the cylindrical crosspiece having a third diameter smaller than the first diameter and second diameter. Support for amended claim 1 is found throughout the present application, as published in Publication No. 2007/0043391, and more particularly, in paragraph [0048] and Figures 1A-B and 2A-B.

Amended claim 10 recites, in part, a method of manufacturing an occlusion device comprising configuring a funnel-shaped hollow braiding by bundling said hollow

braiding at a distal end; allowing an opposite proximal end to remain open; forming a proximal retention area having a first diameter at the proximal end and a distal retention area having a second diameter at the distal end; and interposing a cylindrical crosspiece having a third diameter smaller than the first diameter and second diameter between said proximal and said distal retention areas. Support for amended claim 10 is found throughout the present application, and more particularly, in paragraph [0048] and Figures 1A-B and 2A-B.

*Amplatz '864* cannot be properly relied upon as anticipating the invention as recited in amended claims 1 and 10. For example *Amplatz '864* fails to teach a proximal retention area having a first diameter and a distal retention area having a second diameter and a cylindrical crosspiece interposed between said proximal and distal retention areas having a third diameter smaller than the first diameter and second diameter. This deficiency is best shown in the Examiner's own illustration provided on page five of the *Final Office Action* and in FIGS. 3 and 4 of *Amplatz '864*. These figures show that the portion of the *Amplatz '864* device that the Examiner labeled as the distal retention area and the main cylindrical portion 34 have diameters of equal dimension. In fact, *Amplatz '864* is directed towards an elongated delivery pusher for coupling a self-expanding, non-symmetrical object 14 in a predetermined orientation. Column 3, lines 62-65, and column 5, lines 17-30. Only through these figures are any details regarding the diameters of the various portions of the object 14 of *Amplatz '864* provided. As can be easily observed, the three portions of object 14 defined by the Examiner have, at most, two different diameters.

Considering the above, it becomes evident that *Amplatz '864* cannot anticipate the present invention as claimed in amended claims 1 or 10. Accordingly, it is submitted that these claims are novel and nonobvious over the cited prior art and that these prior art rejections should be withdrawn.

With respect to claims 2, 5, 8, 11, 12, 14, and 15 and new claim 16-20, these claims depend from claims 1 or 10, and for at least the above reasons are also novel

over the cited prior art. However, these claims further limit the claimed invention and thus are separately patentable over the cited prior art.

#### VI. REJECTIONS UNDER 35 U.S.C. §103

Claims 3 and 4 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Amplatz '864*. Claims 3 and 4 are dependent claims that depend from independent claim 1 or a dependent claim that depends from claim 1. At least for the reasons set forth above regarding independent claim 1, namely, that *Amplatz '864* fails to teach or make obvious a proximal retention area having a first diameter and a distal retention area having a second diameter and a cylindrical crosspiece interposed between said proximal and distal retention areas having a third diameter smaller than the first diameter and second diameter, it is also submitted that these prior art rejections should be withdrawn.

Finally, claim 13 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Amplatz '864* as applied to claim 10 in view of U.S. Patent No. 5,944,738 to Amplatz et al. ("*Amplatz '738*"). Claim 13 is a dependent claim that depends from independent claim 10.

Amended claim 13 recites, in part, wherein the step of configuring a funnel-shaped hollow braiding comprises braiding a shape-memory polymer. Support for amended claim 13 is found throughout the present application and, more particularly, in paragraph [0017]. In view of this amendment, this rejection has been rendered moot. However, the Applicants note that at least for the same reasons as set forth above regarding independent claim 10, dependent claim 13 is also not anticipated or made obvious over *Amplatz '864* and *Amplatz '738*, considered alone or in combination. It is therefore submitted that this prior art rejections should be withdrawn.

**VII. NEW CLAIMS**

New claims 16-20 are presented in this Amendment. Support for claim 16 and 19 is found throughout the present application and, more particularly, in paragraph [0039] and [0049]. Claims 17 and 20 recites subject matter previously recited in amended claim 3. Support for claim 19 is found throughout the present application and, more particularly, in paragraphs [0019], [0020], [0037], and [0043].

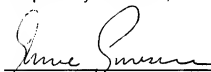
**CONCLUSION**

In view of the foregoing, it is submitted that pending claims 1-5, 8, 10-14, and 16-19 and new claims 16-20 are now in condition for allowance. Hence, an indication of allowability is hereby requested.

If for any reason direct communication with Applicants' attorney would serve to advance prosecution of this case to finality, the Examiner is cordially urged to call the undersigned attorney at the below listed telephone number.

The Commissioner is authorized to charge any additional fee which may be required in connection with this Amendment to deposit account No. 50-2809.

Respectfully submitted,



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